IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.753 OF 1994.

WITH

CIVIL APPLICATION NO.1678 OF 2005

Shri Kiran Jaykumar Patil : Appellant.

versus

Bapu Bala Patil & Anr. : Respondents.

Mr.N.J.Patil for the appellant.

Mr.P.D.Dalvi for Respondent No.1.

CORAM : D.G.DESHPANDE,J.

DATED : 19th APRIL 2005.

ORAL ORDER

1. So far civil application is concerned, it is for restoration of the appeal which was dismissed by me for default on 14.2.2005 as nobody was present for the appellant on that date. Also nobody was present for the

respondents on that day. Therefore, no notice of this application is found necessary. Hence the application is allowed. Appeal is restored to file and, by consent, it is taken up for final hearing.

2. Heard the advocates for the appellant and respondent No.1. The appellant is the owner of the vehicle. He has filed this appeal challenging the order of the Motor Accident Claims Tribunal at Kolhapur dated 15th January 1994 exonerating the insurance company. The deceased was employed by the appellant to unload the sand in the truck. He was not the passenger carried in the truck hired and, therefore, only contention raised in this appeal is that the insurance company was wrongly exonerated by the tribunal. My attention was drawn in this regard to para 4 of the judgment of the reference Court wherein the appellant has admitted that deceased was employed by him . That is also the case of the claimant that the deceased was employed by and he was in the truck to unload the sand in the truck. In view this, the impugned order cannot be sustained. Hence the order.

:ORDER:

Appeal is partly allowed.

The order of the tribunal is modified. The liability imposed by the tribunal shall be against the insurance company and not against the appellant.

No order as to costs.

[D.G.DESHPANDE]

19/04/2005 JUDGE.